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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,944	03/26/2004	Edward D. Glas	MS307029.01 / MSFTP637US	9894
27195	7590	07/26/2005	EXAMINER	
AMIN & TUROCY, LLP 24TH FLOOR, NATIONAL CITY CENTER 1900 EAST NINTH STREET CLEVELAND, OH 44114			HUYNH, PHUONG	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,944

Applicant(s)

GLAS ET AL.

Examiner

Phuong Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07/22/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- ~~7) ☒ Claim(s) 9 is/are objected to.~~
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03/26/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7-6-05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Specification

1. The disclosure is objected to because of the following informality: "RPS 38" on line 30, page 12 in specification should be changed to - - RPS 738 - -.

Appropriate correction is required.

Claim Objections

2. Claim 9 is objected to because of the following informality: claim 9, line 1 " of claim of claim" should be changed to - - of claim - -.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nace et al. (US 6,823,380) in view of Rowe (US 6,324,492).

Regarding claims 1-9, Nace et al. discloses a system that test loads a server including "a dynamic load adjuster component" col. 3, line 15 – col. 4, line 4. Nace et al. does not appear to disclose "user characteristics." Rowe teaches stress testing a server using client profiles designed to mimic the actions that actual network clients are like to make (col. 2, lines 52-54). It would have been obvious to

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one of ordinary skill in the art at the time the invention to provide "user characteristics" in the Nace et al. request. One would have been motivated to so modify Nace et al. to a more accurately measure server stress as taught by Rowe.

5. Regarding claims 2 and 3, Rowe teaches a profile characteristic data store [64] and weightings (see col. 13, lines 1-26).
6. Regarding claim 4, Rowe teaches the characteristic is "load patterns" (col. 15, lines 42-52).
7. Regarding claim 5, Rowe teaches the characteristic is "statistically determined based on web log records" (col. 2, lines 38-54; col. 17, lines 9-26 and lines 35-41).
8. Regarding claim 6, Rowe teaches the characteristic is "predetermined in a single user profile" (col. 8, line 64-col 9, line 9).
9. Regarding claim 7, Nace et al. discloses "a load coordinator" (col. 4, lines 42-49).
10. Regarding claim 8, it would have been obvious to one of ordinary skill in the art at the time the invention to modify the feedback loop provided by Nace et al. for automatic controlling by introducing the "artificial intelligent component" (fig. 4; col. 4, lines 60-67 – col. 5, col. 6, lines 1-12).
11. Regarding claim 9, Nace et al. discloses the system of claim 1 further comprising a closed loop control to enable a continual and sustained rate of requests to server, (see col. 5, lines 18-20; also see fig. 4).

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12. Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nace et al. (US 6,823,380) in view of Rowe (US 6,324,492).

Regarding claims 10-15, Nace et al. discloses a system that stresses a server including an "execution engine" 10d, (see figures 1-4, col.3, lines 21-32; and col.4, line 40). Nace does not appear to disclose "user characteristics". Rowe teaches a stress testing a server using client profiles designed to mimic the actions that actual network clients are likely to make (col. 2 lines 52-54). It would have been obvious to one of ordinary skill in the art at the time the invention to provide "user characteristics" in the Nace et al. request. One would have been motivated to so modify Nace et al. to more accurately measure server stress as taught by Rowe.

13. Regarding claim 12, Nace et al. discloses a control input [40] that adjusts rate of requests [38] loaded onto the server (see figures 1, and 4; col.3, line 55).

14. Regarding claim 13, Nace et al. discloses a queuing mechanism [54] that retrieves and sorts requests to be sent to the server (see fig.4, col.4, line 66).

15. Regarding claim 14, Nace et al. discloses a scheduler [66] that determines number of requests to be generated for an upcoming period (see fig. 4, col.4, line 67).

16. Regarding claim 15, Nace et al. discloses requests are sorted according to a time function for execution (see figures 2, and 5).

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17. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nace et al. (US 6,823,380) in view of Rowe (US 6,324,492).

Regarding claim 16, Nace et al. discloses a method for load testing a server. Nace does not appear to disclose "user characteristics". Rowe teaches a stress server using client profiles designed to mimic the actions that actual network clients are likely to make (col. 2 lines 52-54). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide "user characteristics" in the Nace et al. request. One would have been motivated to so modify Nace et al. to more accurately measure server stress as taught by Rowe.

18. Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nace et al. (US 6,823,380) as applied to claim 16 above, in view of Rowe (US 6,324,492).

Regarding claims 17-21, Nace et al. discloses "the method of claim 16 further comprising comparing the current load with on the server with a desired load" (see figures 6 and 7). Nace et al. does not appear to disclose "user characteristics". Rowe teaches a stress server using client profiles designed to mimic the actions that actual network clients are likely to make (col.2, lines 52-54). It would have been obvious to one of ordinary skill in the art at the time the invention to provide "user characteristics" in the Nace et al method. One would have been motivated to so modify Nace et al. to more accurately measure the server stress as taught by Rowe.

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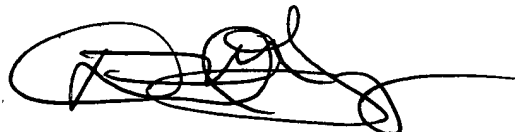
Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
20. Millard (US 6,654,699) is cited for teaching realistic situation network testing (col. 2, lines 22-25).
21. Cherkasova et al. is cited for its teaching of taking connection speed and browser type into consideration for testing a server.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Huynh whose telephone number is 571-272-2718. The examiner can normally be reached on M-F: 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Gray can be reached on 571-272-2119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'David Gray', with a long horizontal line extending to the right.

David Gray
Primary Examiner